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IN THE

Supreme Court of the United States

October Term, 1958

No. 56

**UNITED NEW YORK AND NEW JERSEY SANDY HOOK PILOTS
ASSOCIATION, a corporation and UNITED NEW YORK SANDY
HOOK PILOTS ASSOCIATION, a corporation,**

Petitioners,

—against—

**ANNA HALECKI, Administratrix ad Prosequendum of the
Estate of Walter Joseph Halecki, deceased, and ANNA
HALECKI, Administratrix of the Estate of Walter Joseph
Halecki, deceased,**

Respondent.

PETITIONERS' REPLY BRIEF

LAWRENCE J. MAHONEY

Counsel for Petitioners

67 Wall Street

New York 5, New York.

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STATUTES CITED

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POINT I

The New Jersey Wrongful Death Act does not preserve the decedent's rights, but creates new rights for the benefit of his dependents.

The respondent's counsel has argued that the "such as would" language in the New Jersey Wrongful Death Act, N.J.S.A. 2A 31-1 through 6, gives to the decedent's dependents the same rights he would have had if he had

lived. It is specifically contended that Halecki, if injured under the same circumstances, would have had a right to sue for unseaworthiness, and that his action would have been measured by the Maritime rule of comparative negligence. The respondent maintains that the New Jersey Wrongful Death Act passes the same rights on to the administratrix.

Counsel for the respondent thereby attributes the characteristics of a Survival Statute to a Wrongful Death Act. Survival Statutes, including that of New Jersey, Revised Statutes of New Jersey 2A:15-2; N.J.S.A. 2A:15-3, preserved to a decedent's estate the rights which the fatally injured person had prior to his death. These rights, which would otherwise die with him, are composed of the injured person's own damages, such as pain and suffering, lost wages and medical expenses.

Curtis v. Garcia, 241 F. 2d 30 (CA-3, 1957).

An entirely different set of damages are recoverable under a Wrongful Death Act, which creates new rights for the benefit of the decedent's beneficiaries. A party suing under a Wrongful Death Act sues to recover for his own damages, i.e. loss of anticipated support caused by the injured person's death.

If this respondent had intended to rely upon the rights which Mr. Halecki himself would have had, the action should have been based upon the New Jersey Survival Statute. However, the suit relied solely upon the Wrongful Death Act, which must be the only source of the respondent's rights.

POINT II

Halecki was not performing seaman's work.

In contending that the decedent was doing the type of work which entitled him to the warranty of seaworthiness, counsel for the respondent placed great reliance upon the fact that members of the petitioner's crew had been working aboard the vessel during the week previous to the time when the decedent cleaned the generators. In support of the contention that this fact established that Halecki was doing seamen's work, the respondent referred (page 19) to *Crawford v. Pope & Talbot*, 206 F. 2d 784 (CA-3, 1953). There, the plaintiff had been injured while cleaning deep tanks, and the Court pointed out that members of the crew were at the same time engaged in the same work.

However, the crewmen of the pilot boat "NEW JERSEY" had performed only painting, chipping and other typical seamen's work, none of which was in any way related to the specialized task performed by the decedent. None of the men were working at the same time, and none were qualified to do the type of work done by Halecki.

It is also argued that Halecki was entitled to the warranty of seaworthiness, because the type of work he was doing can be and is performed by electricians employed in a ship's crew.

However, the work done by Halecki in cleaning the vessel's generators was clearly not the type of maintenance work performed by a seagoing electrician while a ship is underway. Electricians employed as members of the crew are primarily concerned with keeping the vessel in operation

and their duties, training, and experience are clearly not similar to those of Halecki.

In this instance, the work could only be done while the vessel was out of operation and was of such a specialized nature that even the repair yard was required to engage the service of a subcontractor. Moreover, the equipment used was completely unlike that carried aboard the ship, and had to be supplied by the decedent's employer and by the repair yard.

POINT III

The Third Circuit, which had decided *Skovgaard*, applied contributory negligence to an action under a State Wrongful Death Act.

In the petitioner's brief, reference was made to the decision of *Hill v. Waterman*, 251 F. 2d 655 (CA-3, 1958), in which the Third Circuit held that contributory negligence should be applied as a complete defense to an action brought under the Pennsylvania Wrongful Death Act. The respondent has pointed out that the summary of the petitioner's argument incorrectly stated that the Hill decision had considered the New Jersey Wrongful Death Act.

However, this inadvertence does not alter the significance of the Third Circuit's position in Hill. It was the Third Circuit's holding in *Skovgaard v. MV "Tungus"*, 252 F. 2d 14 (CA-3, 1957), which supplied the basis for the Second Circuit decision in Halecki. However, in *Hill v. Waterman*, which was decided subsequent to both *Skovgaard* and Halecki, the same Court applied the doctrine of contribu-

tory negligence, which had been rejected by the Second Circuit's holding in Halecki.

Dated: New York, New York

October 16, 1958

Respectfully submitted,

LAWRENCE J. MAHONEY

Counsel for Petitioners

67 Wall Street

New York 5, New York